IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 803 of 2007
To
FIRST APPEAL No. 823 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
BHIKHUBHAI JIVABHAI - Defendant(s)

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Appearance :
MR SUNIT SHAH GP IN FA NOS. 803 TO 812 OF 2007, MR. SATYAM CHHAYA AGP IN FA NOS. 813 TO 823 OF 2007 for Appellant(s) : 1 - 2.
MR VIMAL A PUROHIT for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/03/2007

ORAL JUDGMENT

1. All the appeals arise against the judgement and award of the reference court being L.A. Case Nos. 710 of

95 to 730 of 1995 whereby the additional amount of compensation of Rs. 21.50 paisa per square meter with 30 percent solatium and running interest at the rate of 9 percent per annum and increase at the rate of 12 percent for the period of the year from the date of taking over of the possession of the acquired land and interest of 15 percent per annum thereafter till the entire amount is fully paid or deposited, is ordered.

2. Heard Mr. Sunit Shah, Government Pleader with Mr. Chhaya learned AGP and Mr. Vimal Purohit for the original claimant as shown in the board.

3. Upon hearing the learned advocates appearing for both the sides and perusal of the order passed by the reference court shows that the claimant principally relied upon the judgement and the award passed by the reference court in Land Reference Case No. 553 of 1995 decided on 29.11.2003 and 572 of 1995 decided on 29.11.2003 for the land situated at village Kauka and another which is mentioned as Kauka. It also appears that the reference court while deciding the issue for the compensation has at para 8 taken the basis of its earlier decision for awarding compensation at the rate of Rs. 21.50 paisa per square meter as an additional compensation and the reference court has further relied upon certain decisions on the point that even if the land

is near by situated at the similar position, the present decision can be based on the same.

4. It appears that there is no dispute on the point mentioned by the learned advocates appearing for both the sides that the earlier decision of the reference court for the land situated at village Kauka in Land Acquisition Case No. 572 of 95 and allied matters were carried before this court in the proceedings of first appeal no. 2746 of 2006 to 2762 of 2006 and for the reasons recorded therein by the Division Bench of this court in its decision dated 13.12.2006, the judgement and the award of the learned judge referred in the said matters are confirmed. Even in respect of the earlier decision of the reference court in the proceedings of Land Acquisition Case No. 552 and 553 of 1995 to Land Acquisition Case no. 571 of 1995 were carried before this court in the proceedings of first appeal no. 1996 of 2006 to 2023 of 2006 and for the reasons recorded by Division Bench in respect of the said decision dated 22.11.2006, the appeals are dismissed and the compensation at the rate of 21.50 paisa for the land acquisition is confirmed.

5. Learned advocates appearing for both the sides are in agreement on the point that the land in question is situated at village Simeg which is adjoining village to

village Kauka for which the earlier compensation was fixed by reference court at the rate of Rs. 21.50 paisa. The reference court has taken note that the land in question is situated in near proximity and therefore the valuation fixed and an additional compensation awarded is on the same line as ordered in the earlier decision.

6. It appears to the court that when the basis taken by reference court in its impugned order in the present impugned order, is already confirmed by Division Bench of this court in the above referred proceedings, similar view deserves to be taken in the present group of first appeal. It may be recorded in the proceedings of the first appeal no. 1996 of 2006 arising from Land Acquisition Case No. 553 of 1995 and others where the Division Bench recorded rate observed in para 8,9 and 10 as under:

> **“8. The contention that the previous award of the Reference Court relating to the lands of village Paldi should not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired in the instant case has no substance.**
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> **9. From the record of the case, it is**

evident that in support of their claim for enhanced compensation, the claimants had examined witness Ashlambhai Chikabhai at Ex.28. Though it was claimed by the said witness that each claimant was earning Rs.30,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces, no evidence could be adduced to substantiate the said claim. The record does not indicate that enhanced compensation was claimed by the claimants either on the yield basis or on the basis of comparable sale instances. What was produced by the claimants in support of their claim was the previous award of the Reference Court relating to the lands of village Paldi at Ex.24. Exhibit 24, which is previous award of the Reference Court, indicates that the lands of village Paldi, Taluka: Dholka, District: Ahmedabad, were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued under Section 4 of the Act in the official gazette on November 14, 1991. Therein, the Special Land Acquisition Officer, by his award dated April 30, 1992, had offered compensation to the claimants at the rate of Re.1/- per sq.mt. Feeling aggrieved by the said offer, References were sought. Accordingly, References were made to the District Court, Ahmedabad, where they were registered as LAQ Nos.553 of 1995 to 571

of 1995. The Reference Court, in those cases, awarded additional compensation to the claimants at the rate of Rs.21.50/- per sq.mt. by judgment and award dated September 29, 2003. It is true that in cross-examination, the witness for the claimants has admitted that the distance between his village and village Paldi is five kilometers. However, the suggestion made by the appellants to the said witness that village Paldi is situated near highway is emphatically denied by the said witness. Merely because village Paldi was more developed than village Kanka, the previous award rendered by the Reference Court could not have been ignored while determining the market value of the lands acquired in the instant case, more particularly, when no evidence worth the name was adduced by the appellants. By leading cogent and convincing evidence, the claimants established that the lands which were previously acquired from village Paldi were similar in all respects to the lands acquired in the instant case whereas no evidence could be adduced by the appellants to establish that the previous award of the Reference Court was not a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that previous award of the Reference

Court in respect of similar lands and which has become final can be taken into consideration for determining the market value of the lands acquired from the adjoining village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Paldi for the purpose of determining the market value of the lands acquired in the instant case.

10. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court finds that correct findings of facts have been recorded by the Reference Court to which settled principles of law have been applied. The learned Assistant Government Pleader could not convince the Court to take a view different than the one which is taken by the Reference Court and therefore, the Appeals, which have no merits, deserve to be dismissed."

7. Even in case of first appeal no. 2746 of 2006 and allied matters arising from Land Acquisition Case No. 572 of 1995 and others, the Division Bench in the said decision dated 13.12.2006 interalia observed at para 8,9 and 10 as under:

"8.The contention that the previous award of the Reference Court relating to the lands of village Paldi should not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired in the instant case has no substance.

9. From the record of the case, it is evident that in support of their claim for enhanced compensation, the claimants had examined witness Mahipatsinh Keshubhai Vaghela at Ex.27. Though it was claimed by the said witness that each claimant was earning Rs.30,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces, no evidence could be adduced to substantiate the said claim. The record does not indicate that enhanced compensation was claimed by the claimants either on the yield basis or on the basis of comparable sale instances. What was produced by the claimants in support of their claim was the previous award of the Reference Court relating to the lands of village Paldi at Ex.26. Exhibit 26, which is previous award of the Reference Court, indicates that the lands of village Paldi, Taluka: Dholka, District: Ahmedabad, were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued under Section 4 of the Act in the official gazette on November 14, 1991. Therein, the Special Land

Acquisition Officer, by his award dated May 19, 1992, had offered compensation to the claimants at the rate of Re.1/- per sq.mt. Feeling aggrieved by the said offer, References were sought. Accordingly, References were made to the District Court, Ahmedabad, where they were registered as LAQ Nos.572 of 1995 to 586 of 1995. The Reference Court, in those cases, awarded additional compensation to the claimants at the rate of Rs.21.50/- per sq.mt. by judgment and award dated September 29, 2003. It is true that in cross-examination, the witness for the claimants has admitted that the distance between his village and village Paldi is five kilometers. However, the suggestion made by the appellants to the said witness that village Paldi is situated near highway is emphatically denied by the said witness. Merely because village Paldi was more developed than village Kauka, the previous award rendered by the Reference Court could not have been ignored while determining the market value of the lands acquired in the instant case, more particularly, when no evidence worth the name was adduced by the appellants. By leading cogent and convincing evidence, the claimants established that the lands which were previously acquired from village Paldi were similar in all respects to the lands acquired in the instant case whereas no evidence could be adduced by the appellants to establish that

the previous award of the Reference Court was not a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that previous award of the Reference Court in respect of similar lands and which has become final can be taken into consideration for determining the market value of the lands acquired from the adjoining village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Paldi for the purpose of determining the market value of the lands acquired in the instant case.

10. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court finds that correct findings of facts have been recorded by the Reference Court to which settled principles of law have been applied. The learned Assistant Government Pleader could not convince the Court to take a view different than the one which is taken by the Reference Court and therefore, the Appeals, which have no merits, deserve to be dismissed."

8. As reference court has relied upon its earlier decision which has been confirmed by the Division

Bench of this court by making observations as reproduced herein above, in view of the very similar reasons the appeals are meritless. Hence all the appeals fail. They are dismissed. No order as to costs. Decree accordingly.

(JAYANT PATEL,J.)

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